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Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARK AARON HAYNIE, BRENDAN
RICAHRDS, THE CALGUNS
FOUNDATION, INC., and THE
SECOND AMENDMENT
FOUNDATION, INC.,

Plaintiffs,

vs.

KAMALA HARRIS, Attorney General
of California (in her official capacity),
CALIFORNIA DEPARTMENT OF
JUSTICE, CITY OF ROHNERT
PARK, OFFICER DEAN BECKER
(RP134) and DOES 1 TO 20,

Defendants.

Case No.: 3:10-CV-01255 SI
3:11-CV-02493 SI

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

Conference Date: January 13, 2012
Conference Time: 3:00 p.m.
Conference Place: Courtroom 10
450 Golden Gate Ave
San Francisco, CA
94102

Related Case: *Haynie v. Richards*
3:11-CV-05580 SI
CMC set 3/30/2012

1. **Jurisdiction & Service** – The parties stipulate that the Court has subject matter jurisdiction over the plaintiffs's claims and there are no issues regarding personal jurisdiction or venue.

2. **Facts** – Mark Haynie was arrested once and Brendan Richards was arrested twice for violations of California Penal Code § 12280(b)¹ [30605] – possession of an unregistered assault weapon. In Brendan Richards’ case and with regard to both arrests, police were in the process of investigating a disturbance when they discovered several firearms in the trunk of Richards’ car. Based upon the officers’ belief that these firearms violated the California Assault Weapons Control Act (“AWCA”), Richards was arrested on the spot. Forensic experts employed by the California Department of Justice, however, reviewed the weapons and issued opinions that the firearms did not violate the AWCA. Subsequently, the Sonoma County District Attorney’s Office dismissed the criminal charges. Defendants City of Rohnert Park and Officer Dean Becker contend that the arresting officers had probable cause to make the arrest for violation of the AWCA.

3. **Legal Issues** –

- a. Is the California Assault Weapon Statutory (and Regulatory) Scheme unconstitutionally vague and ambiguous?
- b. Was the constitutionality of the AWCA clearly established law at the time of Brendan Richards’ arrests?
- c. Do plaintiffs have standing to sue the City of Rohnert Park for injunctive relief relating to the enforcement of the AWCA? See, *City of Los Angeles v. Lyons*, 461 U.S. 95.
- d. Given the totality of the circumstances known to the arresting officers, would a reasonably prudent person have concluded that a person in possession of a firearm similar in most respects to an illegal assault weapon, yet equipped with a small bullet button, was in violation of the AWCA? (For probable cause standard, see *Grant v. City of Long*

¹ California has renumbered its Deadly Weapon Statutes effective January 1, 2012. The old numbers are cited and the new numbers are bracketed.

Beach, 315 F.3d 1081, 1085.)

- e. Was the legality of an assault rifle equipped with a bullet button clearly established law at the time of the arrest?
- f. Finally, is California Penal Code § 12031(e) [25850(b)] unconstitutional on its face? Does this statute provide police officers with probable cause to search a vehicle without a warrant? Was the constitutionality of this provision clearly established at the time of the search?

- 4. **Motions** – Defendants California Department of Justice and Kammala Harris filed a Motion to Dismiss which this court granted on October 22, 2011. Defendants City of Rohnert Park and Officer Dean Becker filed a Motion to Dismiss on December 23, 2011. While the hearing on that motion is currently set for February 24, the parties have stipulated that the hearing is to be reset to April 20, 2012 to accommodate the introduction of new parties. The parties are awaiting the Court's order with regard to same. Plaintiffs anticipate filing a Rule 56 Motion.
- 5. **Amendment of Pleadings** – Plaintiffs have already filed an Amended Consolidated Complaint in *Haynie* and *Richards I*² to address issues raised in this Court's Order Granting in Part and Denying in Part the Defendant's Motion to Dismiss. (See Dkt # 42 & 15 respectively.)
- 6. **Evidence Preservation** – Not applicable in this case.
- 7. **Disclosures** – The parties agree to make their Fed.R.Civ.P. 26(f) disclosures 60 days after all parties have appeared and all related cases have been noticed and dealt with by the Court.

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² For now, it seems convenient to distinguish the first *Richards* case – consolidated with the *Haynie* case – from the second *Richards* case which is merely related to the first two, by designating them *Richards I* and *Richards II*.

8. **Discovery**

- a. Plaintiffs will take the following discovery.
 - i. Document Request.
 - ii. Interrogatories.
 - iii. Requests for Admission.
 - iv. Depositions.
- b. Defendants will take the following discovery.
 - i. Document Request.
 - ii. Interrogatories.
 - iii. Requests for Admission.
 - iv. Depositions.

9. **Class Action** – Not applicable to this case.

10. **Related Case** – *Richards, et al., v. Harris, et al.*, Case No.: 3:11-CV-05580 SI. Plaintiffs are aware and have put the defendants on notice that there is a very high probability of a fourth related case that is in the pre-litigation phase at this time. It involves another claim for false arrest and allegedly improper charge of violating Penal Code § 12280(b) [30605]. The arresting agency was Cotati Police Department and the prosecuting agency was the Sonoma County District Attorney's office.

11. **Relief** – Plaintiffs seek damages, declaratory and prospective injunctive relief and payment of attorney fees and costs.

12. **Settlement & ADR** – The California defendants and plaintiffs have participated in a Joint Neutral Evaluation. The Rohnert Park defendants are willing to participate in settlement negotiations, however, they do not believe that civil damages are available in this case.

13. **Consent to Magistrate Judge for All Purposes** – The parties have not consented to a magistrate judge.

14. **Other References** – Not applicable in this case.

15. **Narrowing the Issues** – Plaintiffs would like to discuss procedures for a bench trial in this matter in conjunction with (or in lieu of) a cross motions for summary judgment.
16. **Expedited Schedule** – Not applicable in this case.
17. **Scheduling** – The parties have already rescheduled the hearing for Rohnert Park Defendants’ Rule 12 Motion to permit it to be consolidated with the Sonoma County and City of Cotati Defendants. The parties are currently waiting for the Court’s order with regard to same.
18. **Trial** – As noted above, plaintiffs are prepared to discuss a bench trial in conjunction with, or in lieu of, a Rule 56 Motion. Should plaintiffs’ civil damages claim proceed beyond motion practice, the City of Rohnert Park and Officer Dean Becker request a jury trial on those issues. Defendants expect a five-day trial at this time.
19. **Disclosure of Non-Party Interest Entities or Persons** – None known at this time.

RESPECTFULLY SUBMITTED.

Date: January 3, 2012

Date: January 3, 2012

/s/

/s/

Ross Moody, Counsel for Defendant

Donald Kilmer, Counsel for Plaintiffs

Date: January 3, 2012

/s/

Robert W. Henkels
County for Defendants
City of Rohnert Park & Becker

**ATTESTATION FOR COMPLIANCE WITH GENERAL ORDER 45 AND
LOCAL RULE VIII.B.**

I, Donald Kilmer, declare under penalty of perjury under the laws of California and the United States that I have in my possession e-mail correspondence from Ross Moody and Robert Henkels that the content of this document is acceptable to all persons required to sign the document. I declare that this document was signed in San Jose, CA on January 3, 2012

/s/

Donald Kilmer of
Attorney for for Plaintiffs

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